

Dry Cleaner Environmental Response Program A Program Evaluation Report



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Prepared by:

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in cooperation with the Wisconsin Department of Revenue and

the Governor's Council for the Dry Cleaner Environmental Response Fund

December 2001



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For more information on the Dry Cleaner Environmental Response Program, visit our web sites at www.dnr.state.wi.us/org/aw/rr or www.dnr.state.wi.us/org/caer/cfa.



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December, 2001

Dear Interested Reader:

The Dry Cleaner Environmental Response Fund Program was established on October 14, 1997 by the Legislature at the request of the industry to assist dry cleaners in the costs of conducting environmental investigations and cleanups. This report, as required in s. 292.65(3)(e), Wis. Stats. and prepared in cooperation with industry and the Wisconsin Department of Revenue, summarizes and evaluates the program and offers recommendations for further strengthening of the program. The major recommendations of this report are summarized below:

- ♦ Securing adequate funding for this program will determine the ultimate success of the program. While cost-effective cleanups are occurring, and new technologies are proving to be successful in many situations, the bottom line is that most dry cleaners are unable to absorb significant cleanup costs.
- ♦ The partnership that currently exists between DNR, DOR and industry needs to be maintained. As funds become less available, the DNR, DOR and industry need to maintain constructive discussions on keeping the program functioning without sacrificing the statutory obligations of the DNR with respect to environmental protection.
- ♦ DNR, DOR and industry need to continue and enhance the communication and outreach on this program, especially as deadlines for program participation draw closer.
- ♦ DNR needs to continue its participation on the States Coalition for the Remediation of Dry Cleaners. This Coalition provides a wealth of information with respect to program administration issues, funding issues, as well as innovative technologies.
- ♦ The DNR, DOR and industry should aggressively pursue the statutory changes identified in this report using methods available to them. These changes will continue to move this program forward and help alleviate future funding crises.

In addition to this evaluation, the Governor's Council for the Dry Cleaner Environmental Response Program has included an addendum supporting these recommendations, and highlighting additional issues of importance to the Council. I would like to thank the Governor's Council and the Wisconsin Department of Revenue for their assistance in the development of this evaluation report.

Sincerely

Darrell Bazzell, Secretary
Wisconsin Department of Natural Resources



The Dry Cleaner Environmental Response Program

What is it and Where is it going?

The Dry Cleaner Environmental Response Fund (DERF) Program was created on October 14, 1997 by the Legislature working with the drycleaning industry. Section 292.65, Wis. Stats., provides specific details for the implementation of this program.

Chapter 169 of the Wisconsin Administrative Code establishes the criteria for reimbursement from the DERF. The Wisconsin Department of Natural Resources (DNR) is charged with implementing the program, while the Wisconsin Department of Revenue (DOR) is responsible for facility licensing and fee collection from facilities and solvent suppliers.

The DERF was designed by industry through the Wisconsin Fabricare Institute (WFI) to help dry cleaners pay for environmental cleanup costs as a result of a discharge of a dry cleaning chemical at a dry cleaning facility. Cleanups conducted under this program must comply with the DNR's NR 700 cleanup rule series.

Drycleaners who own or operate a drycleaning facility are eligible for this program, as are property owners of licensed drycleaning facilities (assuming the license fees are being paid). Property owners where drycleaner operations that closed prior to licensing were once located are generally not eligible for this program.

Collecting the Funds. The DOR collects approximately \$1 million annually from a 1.8 percent fee assessed on drycleaning apparel, and a solvent fee based on dry cleaning products used to clean clothes.

As of November 1, 2001, the DNR has received 55 potential claim notifications for this program. Those notifications occur after a discharge has been discovered but prior to costs being incurred. Seventeen applications for 10 different sites have been reimbursed from this fund.

To date, more than \$4.5 million has been collected by drycleaners to fund this program. In turn, almost \$2 million in claims have been filed with the DNR for reimbursement of cleanup costs.

Eligible applicants are required to conduct investigations and cleanup actions in accordance with ch. NR 700, the DNR's cleanup requirement rule. At various milestones in the cleanup process, reimbursement applications are submitted to the DNR. After auditing the applications and assessing the deductibles, eligible costs are reimbursed back to the applicant from the fund.

Of the 55 sites that have notified us of their interest in participating in the DERF program, all but 3 have hired a consultant to investigate their site. 16 sites have completed their investigation and are implementing or have completed a remedy. Site investigations are currently underway on 26 sites.

Evaluating Success. The DNR is required by statute to review the program and make recommendation for the future of the program to the Legislature. The *Dry Cleaner Environmental Response Fund Program - A Program Evaluation Report* is the DNR's first review. Because the implementation of this program is still maturing, the report focuses on short-term implementation issues rather than long-term program direction.

The recommendations of the report are as follows:

1. **Securing adequate funding** will determine the ultimate success of the program.
2. **Maintaining the partnership** that currently exists between DNR, DOR and industry will become more critical as funds become more limited.
3. **Enhancing communication** between DNR, DOR and industry needs to continue, especially as deadlines for program participation draw closer.
4. **Continuing DNR participation** in the States Coalition for the Remediation of Drycleaners will help the program learn from what other states are experiencing in implementing similar programs.
5. **Pursuing the statutory changes** identified in this report will help assure the program moves forward and will help alleviate future funding crises.

The Governor's Council for the Dry Cleaner Environmental Response Fund Program has endorsed these recommendations with the following addenda:

- ♦ Environmental cleanups funded by the DERF program have restored value to many family-owned drycleaning businesses allowing second and third generations to continue the business founded by their parents.
- ♦ Increased interest and participation in this program by drycleaners will result in greater demand for the fund. We need to identify additional revenue alternatives to ensure we are able to meet these needs.
- ♦ DOR needs to aggressively pursue enforcement of this program, as well as streamline their management and implementation of the program.

For more information on the Dry Cleaner Environmental Response Fund Program, check out the DNR website at www.dnr.state.wi.us/org/rr/dryclean.

**Special Addendum by the
Governor's Council for the
Dry Cleaner Environmental Response Fund ("DERF") Program**

By means of this addendum, the Governor's Council for the Dry Cleaner Environmental Response Program endorses the Dry Cleaner Environmental Response Fund Program: A Program Evaluation Report, as prepared by the Wisconsin Department of Natural Resources. This addendum, along with the Program Evaluation Report as developed by the DNR, is intended to meet the statutory requirements contained in s. 292.65(13) Wis. Stats., which requires the Council to evaluate the program at least every 5 years. The Council, having worked with the DNR in the development of this report, believes the report meets their needs in conducting a program evaluation.

The Council applauds the cooperation between the industry and the DNR which allowed this joint report to move forward and serve these dual purposes. We hope to continue to build on the outstanding success of the DERF program, the costs of which are substantially underwritten by the drycleaning industry. The fees paid by drycleaners and their suppliers make the program a win-win for the State, providing funding to pay the administrative costs of the program, including DNR review, without a need for increased taxes. Environmental cleanups funded by the DERF program have restored value to many family-owned drycleaning businesses, allowing second and third generations to continue the business founded by their parents, without the fear of litigation for recovery of environmental cleanup costs.

The Council supports the recommendations contained in the DNR report and has the following additional comments for the Legislature to consider:

1. Having adequate funding for this program will determine the ultimate success of the program. The Governor's Council, the DNR, the DOR and the Legislature need to assess the funding needs of the program as it matures. While cost-effective cleanups are occurring, and new technologies are proving to be successful in many situations, the bottom line is that most dry cleaners are small businesses which are unable to absorb significant cleanup costs. For this reason, maintenance of adequate funding is absolutely crucial to the program's continued success.

The DERF program is gaining confidence within the industry and we anticipate increased interest and participation. With this increased participation more sites are coming into the program and the demand for funding will increase. We need to identify additional revenue alternatives and be prepared to implement these means of increasing funding for this program. Without increased funding, payments will not be timely and the industry's confidence will quickly drop, as interest is not an eligible cost. Prolonged periods waiting for reimbursement from the program will dramatically financially impact the industry/applicants.

2. The partnership that currently exists between DNR, DOR and industry needs to be maintained. As funds become less available, the DNR, DOR and industry need to maintain constructive discussions on keeping the program functioning without sacrificing the statutory

obligations of the DNR with respect to environmental protection but also to work with industry so that cleanup expectations are reasonable.

3. DNR, DOR and industry need to continue and enhance the communication and outreach on this program to the drycleaning community, especially as deadlines for program participation draw closer. The current statutory deadline of August 30, 2005 for submittal of DERF reimbursement applications is far too short of time and will cause a panic in the industry. Given the current pace of cleanups it would be better to make this a deadline for entering into the DERF program. This will lessen the short term demand and allow funding to better match a lower rate of demand.

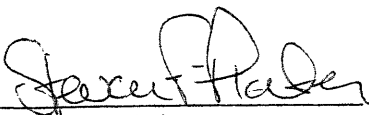
4. We have experienced a decline in revenue collections and a lack of enforcement by DOR. We have supported statutory changes for increased penalties and the DERF program needs to have aggressive collections and enforcement. We have met with DOR on this subject and we feel that DOR needs to streamline their management and implementation of this program. Currently without aggressive enforcement and increased penalties, it is cost-effective for drycleaners to not pay the fees and if a cleanup is needed, the drycleaner can then become current and pay the penalties. The penalty is far too low, enforcement is non-existent and revenue collections are continuing to decline. Why should honest drycleaners pay when their competition is not paying.

The Industry has also asked the legislature to pass a law that makes it illegal for a chemical supplier to sell dry cleaning products to a drycleaning facility that does not have a current license. This requirement is a critical element to improving collection and compliance by the industry.

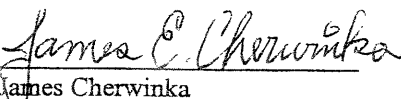
5. DNR needs to continue its participation on the States Coalition for the Remediation of Dry Cleaners. This Coalition provides a wealth of information with respect to program administration issues, funding issues, as well as innovative technologies. Lessons learned from other states are incorporated into the functioning of the Wisconsin DERF program. We strongly support these efforts so that the Wisconsin DERF program remains current with what other states are doing.

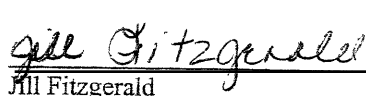
6. The DNR, DOR and industry need to work together to aggressively pursue the statutory changes identified in this report by WDNR and addendum by the Governor's Council. To maintain a successful DERF program, changes in the program are necessary, and working together with the legislature these needed changes can be implemented.

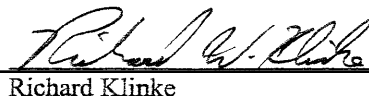
We need to build on the initial success of the first 3 years of the program. We need to continue to increase funding to promote and sustain environmental remediation of drycleaning sites without placing an excessive burden on the dry cleaners.

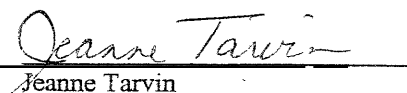

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A Program Evaluation Report
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Dry Cleaner Environmental Response Fund Program

A Program Evaluation Report



I. Background

The Dry Cleaner Environmental Response Fund (DERF) Program was established by the Legislature working with the drycleaning industry in the 1997 - 1999 biennial budget. Sections 292.65, 292.66, and Sects. 77.996 - 77.9964, Wis. Stats., provide specific details for program implementation and fee assessment for this program, respectively. The Wisconsin Department of Natural Resources (DNR) is charged with implementing the program, while the Wisconsin Department of Revenue is responsible for licensing facilities and collecting fees from facilities and solvent suppliers. Chapter NR 169, Wisconsin Administrative Code, effective February, 2000 establishes the criteria for reimbursement from the Dry Cleaner Environmental Response Fund ("Fund"). This fund was designed by the Wisconsin Fabricare Institute (WFI) to help dry cleaners pay for environmental cleanup costs as a result of a discharge of a dry cleaning chemical at a dry cleaning facility. Cleanups conducted under this program must comply with the DNR's rules in Chapter NR 700 to 754, Wisconsin Administrative Code. This evaluation was conducted in consultation with industry and the Wisconsin Department of Revenue.



II. Summary of Program

A. General

Owners and operators of dry cleaning facilities (and their agents) are eligible for reimbursement from the Fund. Operators are persons who hold the license to operate the facility. Owners are persons who own or have possession of a dry cleaning facility and who receive or received direct compensation from the operation of the facility. In addition, a property owner of a licensed facility (i.e. a facility in operation after October 14, 1997), is eligible for reimbursement from the Fund. Property owners where a dry cleaning facility was once located are not eligible for reimbursement from the Fund unless the facility held a license under s. 77.996, Wis. Stats.

Three types of response action costs are reimbursable from the Fund: immediate action costs, interim action costs, and remedial action costs (including site investigations). In order for costs to be eligible for reimbursement, the NR 700 rule series must be complied with, including Ch. NR 706, which requires immediate notification of a discharge of hazardous substances to the environment.

About \$1.2 million dollars are collected annually for the Fund. Applications for costs incurred between January 1, 1991 and October 14, 1997 (i.e. past costs) were required to be submitted to the DNR by April 1, 2000. All other applications are submitted as costs are incurred and milestones achieved. The statute requires that 9.7% of the Fund be reserved on an annual basis for immediate action reimbursements. Reimbursements for immediate action costs are made based on the date the application is received by the department. In an effort to streamline the program and

response actions, in the 2001 - 2003 biennial budget, the Legislature eliminated the statutory provision that had required that 46% of the fund be allocated for interim actions.

Site investigations and remedial actions have the highest fiscal impact on the Fund. Each site for which reimbursement is sought for site investigation and remedial action costs is categorized by the department into a high, medium or low risk category, and funds are allocated between categories (60%, 25% and 15%, respectively). At the end of each fiscal year, unallocated funds in one category may be transferred to another category in which claims exceed the available funds.

The maximum award for response actions is \$500,000 per facility. The following deductibles apply for each facility:

<u>Eligible Costs</u>	<u>Deductible</u>
≤\$200,000	\$10,000
\$200,000 - \$400,000	\$10,000 + 8% of the amount > \$200,000
>\$400,000	\$26,000 + 10% of the amount > \$400,000

Facilities that were closed at the time that an application was submitted for reimbursement were subject to additional fees in the original statute. Because this requirement served as a disincentive for facilities to consolidate their businesses and upgrade machines, it was eliminated in the 2001 - 2003 biennial budget. All applications for facilities that ceased to operate before September 1, 1998, must be submitted no later than August 30, 2005. Reimbursement applications for all other sites must be submitted by September 1, 2008.

Eligible applicants must select a consultant using a qualification based selection (QBS) system which includes at least 3 competitive proposals for the site investigation (including the development of the remedial options report), and the selection of remedial action activities (including remedial action design and implementation). Proposals and cost estimates must include a clear description of the consultant and contract services costs, including a total cost estimate for all services included in the proposal. Some services must be estimated on an hourly basis.

If the consultant selected is not the lowest cost proposal, the owner or operator shall justify the selection to the department's satisfaction and obtain the department's approval for that selection before entering into a contract with that consultant. The proposal cost estimates provided by the selected consultant shall be the maximum paid by the department for the response action activities. Costs incurred as a result of a change order may be reimbursed from the Fund if the department finds the changes and costs reasonable.



In addition to provisions to provide cost controls for this program (i.e. deductibles, QBS consultant selection process), there are also a number of pollution prevention requirements for dry cleaners to be eligible for this program. All facilities using perchloroethylene must document that the solvent is delivered through a closed loop direct coupled system. Owners or operators of facilities

constructed after 10/14/97 must have adequate containment and diking around their equipment to ensure their eligibility into this program.

B. Program Administration

Four staff positions are funded by the DERF program - one position in the Department of Revenue and three positions in the Department of Natural Resources (one position in the Bureau of Community Financial Assistance and two technical field positions in the Remediation and Redevelopment program for technical support in remediation activities). The Department of Revenue is responsible for licensing drycleaning facilities and collecting solvent fees from chemical manufacturers. The Department of Natural Resources is responsible for overseeing the cleanups and administering the reimbursement portion of the program.

1. Department of Natural Resources. Within the DNR, two Bureaus implement the DERF program. The Community Financial Assistance (CFA) Bureau has expertise in financial management, auditing, and reimbursement of funds. The Remediation and Redevelopment (RR) Bureau is responsible for implementing the environmental response functions of the rule, including investigations and remedial actions. The RR program instituted a DERF program team, comprised of staff from both the RR and CFA programs, the hazardous waste program, legal services, and the cooperative environmental assistance program to discuss issues that arise in the DERF program.

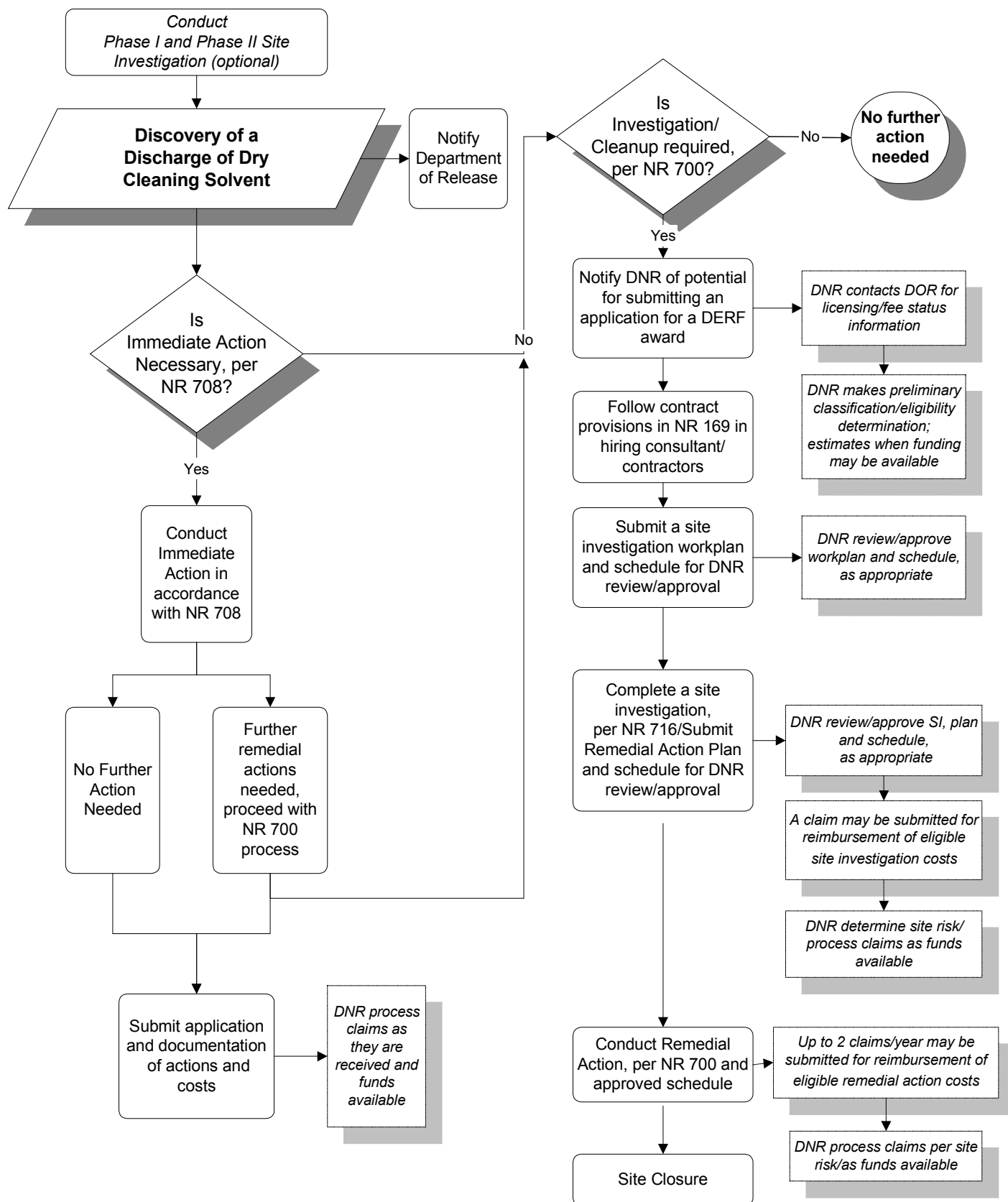


Figure 1, on the following page, outlines the process the DNR uses for implementing the DERF program. This diagram includes the milestones that must be met for a claim to be submitted and identifies DNR involvement with the site. In general, regional project managers are the main contact for the dry cleaner conducting the cleanup. The regional project manager is authorized to approve all pertinent documents, including change orders, as allowed by ch. NR 169, and is the first reviewer of the reimbursement application as it is submitted to the DNR.

The regional project manager is also authorized to grant variances to non-statutory requirements of the program, as warranted for site-specific situations. To date, several variances have been granted. Several of these variances were granted to expedite the overall cleanup of the site by separating soil and groundwater investigations for the purpose of application submittals. This allowed the department to reimburse an applicant for their soil investigation and use that money to begin soil cleanup, while the lengthier groundwater investigation was still being conducted. The rule specifies that no reimbursement applications will be accepted until a complete ch. NR 716 site investigation is complete (both soil and groundwater). In these circumstances, due to the complexity of the site's groundwater pathway, dividing the site investigation into soil and groundwater components proved a more expeditious and cost-effective approach given the site-specific circumstances.

Figure 1
Flowchart for the Dry Cleaner Environmental Response Program - October, 2001

Prepared by the Bureau for Remediation and Redevelopment



The Regional Project Manager, after receiving a reimbursement application, reviews that application and completes an application checklist to ensure the submittal is complete and actions were taken according to the approved workplans. The project manager then submits the application to the Bureau of Community Financial Assistance for auditing. The DNR has 90 days to review and audit a reimbursement application. The DNR auditor works directly with the dry cleaner and the regional project manager to expedite the submittal of all necessary documentation so the application can be processed as expeditiously as possible. Because there are funded positions for reviewing required reports, fees normally charged for those services (review and approval of site investigation workplans and remedial action options report) are waived for sites in the DERF program.

In addition to the technical field staff, the RR program supports the DERF program by providing a non-DERF funded program coordinator via the DERF Team Leader. This position is primarily responsible for overseeing the implementation of the program, staffs the Governor's Council for the Dry Cleaner Environmental Response Program, and has primary responsibility for rule-drafting and outreach. The Governor's Council meets biannually to discuss various aspects of the program. Council input was solicited and agreement sought on statutory language changes, as well as during the rule-making process. The Council is comprised of 3 dry cleaners (2 large, one small), a chemical manufacturing representative, an equipment representative, and an environmental consultant.

2. Department of Revenue. The Department of Revenue is responsible for licensing drycleaning facilities and collecting license fees and solvent fees. Dry stores (outlets for dropping off and picking up dry cleaning) for dry cleaning facilities do not receive licenses. License fees and solvent fees are collected on a quarterly basis, but licenses are issued annually based on the previous year's fee payments. The processing of licenses and collection of fees takes place at the DOR central office. Tax agents are available to answer questions via phone or e-mail. Field agents are also available for site visits to ensure facilities are operating with licenses. Since the start of the program approximately 350 dry cleaners have licensed annually. The average annual license fee for a drycleaning facility is \$1166.

When applications are submitted to the DNR for reimbursement payments, DNR contacts DOR for license information to ensure that the facility has complied with the licensing requirements. DOR has the ability to look up individual sites and make that determination. DNR has adapted its forms to include information that DOR needs to process those requests.

C. Funding

1. Revenues. As previously discussed, the program is funded by license fees paid by dry cleaners and solvent fees paid by the suppliers of dry cleaning solvents. The Department of Natural Resources is charged with administering the program, and the Department of Revenue is responsible for collecting the fees. The Dry Cleaners pay a quarterly license fee of 1.8% of their gross receipts for dry cleaning services. Solvent suppliers pay a

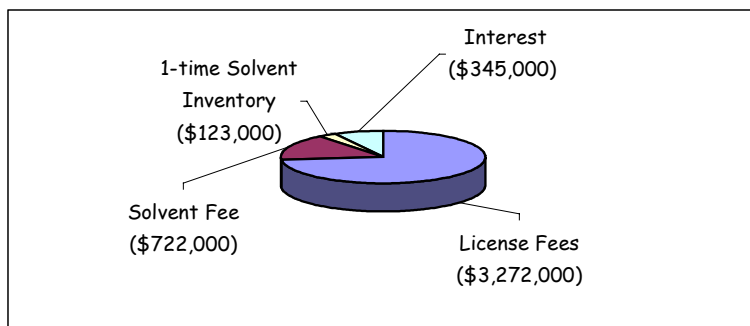


Figure 2 -Sources and sums of funds collected into the DERF as of 11/01.

quarterly fee on solvents sold based on the following formula: \$5 per gallon on perchloroethylene; and \$.75 per gallon on other drycleaning products. In addition, in 1998, dry cleaners paid a one-time fee on solvents in their possession on October 14, 1997.

Between February, 1998, (when fee collections first began) and June 30, 2001, the fund has generated revenues of almost \$4,500,000. License fees are being collected from 320 dry cleaners on approximately 350 dry cleaner sites; solvent fees are being collected from 13 suppliers. Based on the current fee rates we expect the fund to collect approximately \$1.2 million annually - \$950,000 (80%) from the dry cleaner license fee and \$245,000 (20%) from the solvent fee. Revenues from 2001 are reported to be significantly decreased, but we anticipate increased enforcement by DOR as discussed in section 4.B. will return revenues to their anticipated levels.

2. Expenditures. After notifying the Department of a discharge, the first step an eligible applicant must take in order for a site to be considered in the DERF program is to submit to the DNR a Notification of Potential Claim Form. This form identifies the eligibility information that must be assessed for the DNR to determine whether an applicant is eligible for this program. This form must also be submitted prior to the applicant incurring any site investigation or cleanup costs. With the exception of phase I and phase II investigations, all costs incurred prior to the submittal of this form are not eligible for reimbursement from the DERF program. When the DNR receives this form, an assessment of an applicant's eligibility is conducted and a response is provided to the applicant indicating the eligibility of the applicant. To date, fifty-five sites have submitted the Potential Claim Notification form to the DNR.



Available funds are allocated among two response action categories for distribution - immediate actions (9.7%), and site investigations & remedial actions (90.3%). Funds in the site investigations & remedial action category are further allocated between past (1/1/91-10/14/97) and current clean up costs. All past cost applications have been paid, per ch. NR 169, totaling just over \$500,000. In addition, funds for remedial actions are further divided into risk categories, with the current rule specifying that 75% of the funds be reserved for high risk sites, 25% reserved for medium risk sites, and 15% for low risk sites. Applications are reimbursed based on the funding available and the date on which the application was received.

3. Environmental Fund. In addition to reimbursing dry cleaners who conduct cleanups, there is a provision in the DERF program that allows the state to use Environmental Fund monies to conduct the cleanup (termed a "state-lead site") if the department determines that a cleanup is necessary, and the eligible applicant is unable or unwilling to conduct the cleanup themselves. The state is then reimbursed for those expenditures from the DERF program. The two sites in which this provision is being utilized were evaluated by the RR Ability to Pay team and found to be unable to obtain financing for the cleanup due to very limited resources.

Table 1 - Current Costs Applications

CURRENT COST APPLICATIONS (as of October 18, 2001)						
Project No.	Type of Application	Application Request	Deductible	Ineligible costs	Penalty applied	Payment processed
DC-001	SI	\$51,514.22	(\$10,000.00)	(\$846.40)	(\$48.20)	\$40,619.62
DC-002	Remed	\$4,564.20	DCP-011			\$4,564.20
DC-003	Remed	\$67,319.70	DCP-013			\$67,319.70
DC-004	SI	\$12,565.24	DCP-004	(\$461.22)	(\$230.61)	\$11,873.41
DC-005	Remed	\$13,593.36	DCP-005	(\$247.55)	(\$123.78)	\$13,222.03
DC-006	SI	\$86,577.00	(\$10,000.00)	(\$11.02)		\$76,565.98
DC-007	Remed	\$37,145.04	DCP-001			\$37,145.04
DC-008	SI	\$95,169.83	(\$7,500.00)			\$87,669.83
DC-009	SI/Remed	\$55,736.27				\$55,736.27
DC-010	Remed	\$131,758.68	(\$10,329.86)	(\$751.30)		\$120,677.52
DC-011	Remed	\$60,835.22	(\$4,865.79)	(\$12.80)		\$55,956.63
DC-012	SI/Remed	\$79,769.60	DC-008	(\$150.00)		\$79,619.60
DC-013	SI/Remed	\$57,381.04				\$57,381.04
DC-014	SI/Remed	\$225,225.46	(\$12,066.13)	(\$398.82)	(\$199.41)	\$212,561.10
DC-015	SI/Remed	\$48,660.69	DC-006			\$48,660.69
DC-016	SI	\$44,087.67	(\$10,000.00)	(\$283.07)	(\$141.53)	\$33,663.07
DC-017	Remed	\$17,283.01	(\$1,527.21)			\$15,755.80
	Total =	\$1,089,186	(\$66,288)	(\$3,162)	(\$743)	\$1,018,991

D. Technical Site Information

To date, 10 drycleaning facilities have submitted a total of 17 applications for reimbursement from this program. Currently these sites are in various stages of investigation and remediation. Most sites are finding both soil and groundwater contamination associated with their facilities. The following chart identifies the cost categories for these facilities, to date.

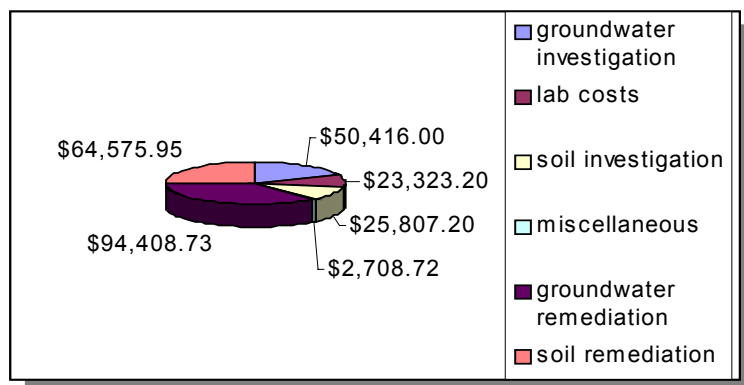


Figure 3 - Cost Breakdown for Reimbursement Applications.

Of the sites that have begun soil remediation, 5 have selected natural attenuation as part of their soil remediation strategy, 3 have installed soil vapor extraction units, 4 have chosen some amount of off-site disposal, 2 have established biopiles to biologically treat the contaminated soil, and one has included a cap. For groundwater, 5 sites are including natural attenuation as part of their remedy, 3 sites have chosen reductive dechlorination, one has chosen aerobic co-metabolism, 3 are implementing air sparging, and one has implemented a dual phase extraction system.

E. Outreach

Once the rules became effective, DNR conducted a mass mailing of a series of fact sheets and application forms to approximately 350 drycleaning facilities. The packet of information was intended to educate and inform dry cleaners about the program requirements, including the time sensitive information on applications for past costs. Applications for costs incurred between January 1, 1991 and October 14, 1997 were required to be submitted to the department within 60 days of the effective date of the rule.

In addition to mailing materials, DNR conducted outreach with the Wisconsin Fabricare Institute at their fall and spring conventions and through their bi-monthly newsletter. DNR staff have initiated a regular column in the WFI newsletter for regular updates on the program. The WFI serves as a resource for dry cleaners and the DNR for a variety of contacts and information sharing efforts.

The DNR RR and CFA programs use their web sites to include links to all fact sheets and application forms, as well as including the most recent information on the program. The RR program provides information via a Listserv to which many consultants subscribe, and issues a bimonthly newsletter providing insights and highlights of the various programs implemented by the Remediation and Redevelopment program.

In addition to DNR outreach on the DERF program, DNR is part of a coalition of states which have dry cleaner specific cleanup programs. The States Coalition for the Remediation of Dry cleaners (SCRD) is funded by the US EPA Technology Innovation Office through the National Groundwater Association. This coalition meets several times a year in person or via conference calls to discuss program administration or technical site remediation issues specifically focused on the dry cleaner industry. This coalition serves as an excellent resource for WDNR staff and managers as the dry cleaner program matures in Wisconsin.



III. Assessment of Statutory Changes

A. Summary

The department began rulemaking shortly after the enactment of secs. 262.65 and 262.66, Wis. Stats. Department staff worked with Council members as well as other internal and external partners in developing ch. NR 169, Wis. Adm. Code, to implement the statutes. Public hearings were held and comments were incorporated into the rule, as appropriate. Chapter NR 169, Wis. Adm. Code, became effective on February 1, 2000.

During the rulemaking process, the DNR in cooperation with industry, identified several programmatic issues that needed clarification in the new statute, that were important issues not addressed by the new statute, or that were issues which under the new statute had different end results than the industry had anticipated. Therefore, while rulemaking was occurring, statutory revision requests agreed upon by both the DNR and industry were included in the DNR's 1999 - 2001 biennial budget request and in the budget bill. Those changes are reflected in the table below. Many of the changes to s. 292.66, Wis. Stats., relate to interim actions.

1. 1999-2001 Statutory Changes.

Key-words	New Statutory Language	Original Statutory Language
Interim Actions Reimbursement Limits	Preliminary site screening and the purchase and installation of interim action equipment will be reimbursed as a 50% co-pay for eligible costs. Maximum awards from the fund are now \$20,000 of which no more than \$3000 may be used for preliminary site screening. There are no deductibles applicable for interim actions.	Preliminary site screening and the purchase and installation of interim action equipment had a \$15,000 limit of which no more than \$3,000 could be used for preliminary site screening. All costs over \$15,000 were to be borne by the dry cleaner. There were no deductibles for this statute.
Interim Action Perchloroethylene Delivery	In order to be eligible for reimbursement, applicants must document that perchloroethylene is delivered through a closed loop system.	No provisions for this existed in the original statute.
Immediate Actions	Allow removal of soil and free product recovery as eligible costs for immediate actions	Soil removal and free product recovery were specifically excluded as eligible for immediate action reimbursements.
Financing Costs Clarification	Clarifying that financing costs are not eligible for reimbursement.	Technical wording correction. These costs were never intended to be reimbursable.
Interim Action Eligibility Criteria	Closed facilities, as well as operating facilities are eligible for interim action reimbursements.	The original statute limited interim action reimbursements only to operating facilities.

2. 2001-2003 Statutory Changes. Once the rule became effective and the department had experience in implementing the program, the DNR and industry agreed to additional statutory changes that they found to be needed to enhance or clarify portions of the program. Those changes and the DNR's 2001 - 2003 biennial budget request, were included in the 2001 - 2003 biennial bill and are identified below.

Definition Change: The definition of dry cleaning solvent was changed to a definition of a dry cleaning product, which "means a hazardous substance used to clean apparel or household fabrics, except for a hazardous substance used to launder apparel or household fabrics." This broadens the definition to include more than "solvents" and should address new products that are introduced in the future as dry cleaning technologies advance.

Interim Action Statute Deleted: Sec. 292.66, Wis. Stats., which related to interim actions, was deleted from the statutes. This provision was never used and resulted in administrative complexity in terms of allocating resources from the fund. In addition, "interim action" was defined in s. 292.65, Wis. Stats., in a manner that allowed interim actions to be used at a site where appropriate and for those costs to be reimbursed using the same formula as immediate and remedial actions.

Pollution Prevention Enhanced: All dry cleaners, regardless of when their facilities were constructed, are required to meet the following pollution prevention requirements: managing their wastes as hazardous wastes per state and federal hazardous waste requirements; not discharging drycleaning product or wastewater from dry cleaning machines into any sanitary sewer or septic tank or into the waters of the state; and having all perchloroethylene delivered to their dry cleaning facility by means of a closed, direct-coupled delivery system.

Attribution Specified: Specifies that the cleanup costs incurred by the owner or operator of a dry cleaning facility must be the result of a response to a discharge of a dry cleaning product from that facility.

Closed Facilities Deadline Extended: Facilities that closed prior to September 1, 1998 may submit applications for reimbursement of cleanup costs up to August 30, 2005. Applications for these facilities will not be accepted after August 30, 2005. This was extended from August 30, 2002.

Service Providers/Product Suppliers Covered: Costs associated with discharges caused by a service provider or product supplier prior to October 14, 1997, are now eligible for reimbursement by this program.

Higher Deductible for Closed Facilities Eliminated: The statute was changed so that there is only one sliding scale deductible regardless of the operating status of the facility at the time the application for reimbursement is submitted. This means that closed facilities do not have to pay 30 times the average annual license and solvent fee as a deductible for their reimbursement application. It does not change the eligibility criteria for applicants, only the deductible that would be assessed against the application.

B. Analysis of Statutory Changes

The first round of statutory changes tried to improve sec. 292.66, Wis. Stats., as it related to interim actions. The more recent statutory changes eliminated that statute all together. Other significant statutory changes included a change in how deductibles are calculated for closed facilities and the increase in pollution prevention requirements.

The department and industry agreed that the interim action statute (sec. 292.66) was not providing dry cleaners any additional response options that were not already available in ch. NR 700. In addition, the interim action statute required that dry cleaners pay a 50% cost share on interim actions, in addition to the deductibles they would be assessed for their site investigation and remedial action activities. Therefore, the statute separating out interim actions was deleted with the last budget bill. If site conditions warrant an interim action, it may be conducted as part of the NR 700 cleanup process. This change should not significantly affect the fund or the actions taken at dry cleaner sites, it simply streamlines the process.

The statutory change that eliminated the higher deductible for closed facilities was initiated to serve two purposes. The main reason for this change is that the higher deductible for closed facilities served as a disincentive for dry cleaners to consolidate their facilities and upgrade to a higher standard of machine that uses less chemicals and has fewer emissions of those chemicals, as well as penalizing those who had already upgraded their machines. Those dry cleaners who already consolidated were assessed significantly higher deductibles (upwards of \$100,000) when they conducted cleanup at a facility that was converted to a dry store, and those who were considering consolidation chose to remain in operation to assure themselves of the lower deductible.



The change in how deductibles are calculated will also streamline program administration because it will no longer be necessary to distinguish between an open and closed facility. This will also simplify the calculation of deductibles - the past formula included determining the annual average license fee and solvent fee and multiplying that fee by 30. The DERF program will see an increase in cleanups at these sites, as the costs for getting into the program are much more reasonable. We anticipate lower cost sites being affected more - higher costs sites would still profit even if they had to pay more than \$100,000 in deductibles. This could, in the long term, have an impact on the overall future of the fund.

The statutory changes also improved the pollution prevention requirements, requiring that all facilities that use perchloroethylene document that the delivery is through a closed-loop direct-coupled delivery system. Chemical suppliers have low or no-cost options for that delivery.

DNR and industry worked together to identify these changes and to ensure that the changes would be included in the biennial budget process. This cooperation between the department and industry illustrates how these types of partnerships result in more successful program implementation and more effective programs. This cooperation will continue as the program matures and funding issues drive discussions, as opposed to the programmatic issues that typically arise in the first few years that a new program is implemented. The DNR and industry will begin incorporating these changes in to the rule in early 2002, with a new rule anticipated in early 2003.

C. Future Statutory Changes

In general, s. 292.65, Wis. Stats., is a highly prescriptive statute. While this provides precise direction for the DNR and industry in implementing the program, it also results in the inability of the DNR to make changes to enhance the program without seeking legislative approval of statutory changes. Each biennial budget cycle, there have been minor changes to this statute, and the industry, along with DNR are likely to continue making statutory change recommendations in order to continue to enhance the program. This is not interpreted by the DNR or industry as indicative of a poorly drafted statute, but one that simply reflects the concerns the Legislature had in light of

other similar funding programs that had significant fiscal problems in recent times. This does result, however, in the need for legislative approval of what may be considered minor changes to the program.

DNR supports several suggestions for future legislative changes identified by the Governor's Council. These changes include increasing the penalty for operating without a license from \$5.00/day to \$25.00/day, which was recommended in the 2001 -2003 DNR budget package, but was not included in the Governor's budget bill. The Department of Revenue has determined that it is possible for them to issue retroactive licenses to a dry cleaner if they pay the penalties and past fees for their operation. In several instances, this option has been taken by a dry cleaner. The fact that there are a number of dry cleaners operating without a license affects the total funds collected and the future viability of this program.

In addition to increasing the penalties for operating without a license, the industry and DNR both support adding a provision to the statute that would make it illegal for a chemical supplier to sell dry cleaning products to a dry cleaning facility that does not have a current license. This will help provide incentives for dry cleaners to keep their licenses up to date. This will need to be assessed with respect to workload implications at DOR.

Statutory changes are necessary to avoid the problem discussed in the assessment of the DOR program implementation relating to the timing of issuing licenses and fee payments. Dry cleaners operate from January 1 until mid-February without a license while the fee payments and licenses are processed. This will cause a problem if the statute is revised to prohibit dry cleaning product suppliers from selling to a dry cleaner without verification of a valid license, as discussed above.



Another change sought by the drycleaning industry and the DNR relates to the dates specified in the statute for submittal of reimbursement applications. The current statutory language states in s. 292.65(8)(a) that "an owner or operator may not submit an application after August 30, 2005, if the application relates to a dry cleaning facility that ceased to operate before September 1, 1998. An owner or operator may not submit an application after August 20, 2008, if the application relates to any other dry cleaning facility."

The industry and the DNR believe a more reasonable approach is to require the notification of potential claim for the program rather than the application to be submitted by those dates. This has a number of advantages because in order to submit a notification of potential claim form, an applicant must first document a release of a drycleaning product from a drycleaning facility. This in effect requires dry cleaning facilities to conduct a phase I and phase II environmental assessment by these dates since releases are typically documented as a result of such assessments. This change would allow for cleanups to progress based on the site-specific needs for that particular cleanup. For example, under the current statute the costs of continuing to monitor a site for

natural attenuation would not be covered after the dates in the statute. However, with this change, those costs could be reimbursed by the Fund, removing the incentive to pursue more aggressive, costlier cleanups primarily to qualify for reimbursement from the Fund. This approach would have the added benefit of allowing DNR to know the universe of sites that will be pursuing reimbursement for their investigation and cleanup costs, allowing us to project future funding needs for that class of sites.

Lastly, the industry and DNR support increased pollution prevention requirements that would apply to all facilities, not just those constructed after October 14, 1997. Specifically, diking and containment around machines is easily accomplished and a good management practice for all facilities.



IV. Assessment of Program Implementation

A. DNR

DNR approached the implementation of this program as a cooperative venture with the drycleaning industry and DOR. Industry representatives, rather than DNR staff, were integral in developing the legislation and structure of the program. The rule-making process was guided by the prescriptive statutory language, and industry representatives were brought into the process from the very beginning.

The Department's main goal in implementing this program was to ensure that the program met the needs of the industry, was consistent with industry expectations, and was consistent with the already well established cleanup program's requirements. Department staff spent considerable time initially developing forms, fact sheets, and web pages that would introduce the individual dry cleaners and consultants to the program and its requirements, talking with industry representatives and DNR field staff, and participating in discussions and training sessions for both. Because of the interaction between DNR and industry, DNR is more capable of adjusting the program and requesting statutory language changes on a more fluid basis, allowing the program to continue to be effective.

Approximately 12% of the fund is spent on administrative costs, including DNR costs for auditing, outreach, as well as technical field staff time and DOR costs. Four positions (3 at DNR and one at DOR) are funded by the DERF program. Industry representatives and the Governor's Council have expressed a high level of satisfaction with this low percentage of administrative costs. The Council recognizes that with more money for administration, more could be accomplished, however that must be balanced with the goal of maximizing the funds for cleanup reimbursements rather than administrative costs.

In general, the outreach DNR conducted was well received and resulted in an understanding of the program requirements and expectations. Due to the nature of the statutory changes, DNR needs to continue to conduct outreach efforts by updating the fact sheets, web pages and application forms while balancing the time required for those tasks against the time required for other program implementation needs.

DNR field staff are responsible for ensuring investigations and cleanups are consistent with the ch. NR 700 rule series. Industry representatives are concerned that cleanups be risk-based and cost-effective. The technology for the investigation and remediation of chlorinated compounds (i.e. perchloroethylene is the most common dry cleaning solvent) has advanced significantly over the past 5 to 10 years, with the greatest advances in the area of enhanced bioremediation. These advances, along with the flexibility in the DNR cleanup rules, have allowed dry cleaner sites to be remediated using lower cost, less intrusive technologies.

Many of these technologies are proving to be successful at significantly reducing the contaminant concentration levels at sites.



Incomplete applications are the main obstacle DNR has encountered in being able to quickly reimburse dry cleaners for their cleanup costs. When an application does not have the necessary documentation to process, the efficiency of the review suffers greatly. DNR has put additional information on its web page and in its communications with the industry and consultants regarding the documentation needed to process a reimbursement application, and DNR is seeing more complete applications being submitted, especially from consultants who have had previous applications reviewed.

B. DOR

Several sections within DOR work on various aspects of the DERF program. Because of that, DOR has provided one main contact for the DERF program to assist with questions which has helped streamline the communications between DNR and DOR. DOR initially suggested that information regarding licensed facilities was tax information which DOR could not release. After further review and interpretation, DOR determined that while the fees paid by dry cleaners for their licenses are not public information, the names of the licensed facilities can be released to the public. Because the dry cleaner industry sees its role as promoting the program and encouraging facilities to comply with program requirements, being able to determine which facilities have not obtained licenses is important for it to "self-police".

Industry representatives have worked with DOR to identify facilities operating without a license. As a result of inquiries from industry and a recent decrease in the number of facilities licensed and associated decrease in the fees collected, DOR has initiated a "non-filer" project. This project includes sending letters to dry cleaners who were once previously licensed but no longer have a license. They will be following up as necessary to ensure that all facilities are properly licensed. Fees of \$5/day are assessed for all facilities that operate without a license. DOR will evaluate this effort within 6 months of the initial letters being sent out. In addition, they will also work with the industry when industry submits business names that may be operating without a license.

Dry cleaners are required to post their licenses in view within their facilities. However, one problem exists. Licenses are based on the previous years fee payments, with the last payment due to DOR on January 15th. However, the licenses are valid on a calendar year basis, so the previous year license expires on December 31st. Therefore, the facilities are actually operating without

licenses from January 1 until the new license is issued, usually in mid-February. This issue will likely need statutory changes to resolve.

C. Funding

The main obstacle the DERF program faces is limitations in funding. Because this industry consists primarily of small businesses with relatively low profit margins but high incidence of contamination, the DERF program was developed as a safety net for the dry cleaner industry which would allow businesses to continue to operate when contamination is found and cleanup costs are incurred. The ability of a dry cleaner to borrow money for a cleanup depends on funds being readily available for reimbursement, but the industry recognizes that it is not capable of funding a program that allows for the immediate cleanup of all dry cleaner sites.

The fund generates approximately \$1 million annually, facilities are eligible to receive up to \$500,000 for cleanup cost reimbursement. While we are not seeing a significant number of sites reaching this maximum, we have seen several that are likely to exceed \$500,000 in cleanup costs.

Because funds were collected at the initiation of the legislation, but not dispersed until after rules were finalized, the resulting build up of funds allowed the DNR to pay all past cost applications as they were received, and still have funds remaining for new projects entering the



program. However, DNR estimates that accumulated funds will be depleted by the end of fiscal year 02, if applications are submitted as anticipated. The DNR notes that we cannot absolutely predict when applications will be submitted. There are two main requirements regarding the timing of application submittals. The first is that applications for site investigations cannot be submitted until the investigation is complete and the remedial action is selected. Thus if a project is delayed or further investigation is required, there will be a delay in when the application can be submitted. The second requirement is that applications must be submitted within 120 days of completion of the remedial action. The DNR projections for demand on the fund are our best estimates, recognizing that actual submittal dates are not within our control.

As more dry cleaners enter sites into the program and increase demand for the Fund, dry cleaners seeking reimbursement for sites entered after fiscal year 02 may have to wait until sufficient funds have been collected in order to get their reimbursement. Because financing costs are not reimbursable, dry cleaners who need to borrow money to conduct and pay for cleanup activities may suffer significant financial impact while waiting for the DERF to accumulate sufficient money to reimburse their costs.

The existing fees that dry cleaners pay are based on a 1.8% fee on gross receipts for drycleaning activities and a \$5/gallon fee on perchloroethylene and a \$0.75/gallon fee on other drycleaning products. The fees on drycleaning solvents comprise a small portion of the fund. It is unlikely that increasing the fees would generate more Fund revenue because new drycleaning technologies require less and less chemicals. Increasing the license fee percentage that dry cleaners pay will affect their overall business, as consumers may reassess their need to process their clothes at

drycleaning facilities. The general national trend in wearing and purchasing clothing that does not need to be drycleaned also affects the overall funds contributed to the fund.

In reviewing other states dry cleaner programs, several have funding mechanisms similar to Wisconsin's. Each of these state programs has had to address funding shortage issues. Many are projecting funding needs far into the future.



V. Assessment of Program Future

Discussions between industry, DNR and DOR have been focusing on short term implementation issues as the program gets up and running. Many dry cleaners have shown caution in entering into this program. Risks for the dry cleaners are that once they discover contamination, they know that costs will need to be incurred, and there are no guarantees that funds will be available for them when it is time for them to submit their reimbursement applications.

Many of the dry cleaners are simply not looking for contamination without a need to do so - i.e. property transaction, business transaction, etc. While some thought this program would have a large number of initial applications that would drain the fund from the start, the reality is that the applications have been coming in at a slow but steady rate. This has resulted in all applicants receiving their reimbursements promptly after their applications have been successfully audited. This is likely to continue for the next year, but projections beyond that show that there will be more pressure on the fund. This will have an impact, as dry cleaners must pay for the financing costs for their site investigations and cleanups.

Long-term discussions need to take place with DNR, DOR and industry (via the Governor's Council) regarding other types of alternatives available to the industry for their consideration, once the program stabilizes. Other long-term discussions will also need to address the funding needs for the program, as applications are likely to exceed fund generation within the next few years.

For the short term, however, the Dry Cleaner Environmental Response Program is highly effective at assisting dry cleaners in their ability to address environmental responses needed at drycleaning sites. DNR recommends that this program continue as originally envisioned with the following recommendations:

1. Having adequate funding for this program will determine the ultimate success of the program. The Governor's Council, the DNR, the DOR and the Legislature need to assess the funding needs of the program as it matures. While cost-effective cleanups are occurring, and new technologies are proving to be successful in many situations, the bottom line is that most dry cleaners are unable to absorb significant cleanup costs.
2. The partnership that currently exists between DNR, DOR and industry needs to be maintained. As funds become less available, the DNR, DOR and industry need to maintain constructive

discussions on keeping the program functioning without sacrificing the statutory obligations of the DNR with respect to environmental protection.

3. DNR, DOR and industry need to continue and enhance the communication and outreach on this program, especially as deadlines for program participation draw closer.

4. DNR needs to continue its participation on the States Coalition for the Remediation of Dry cleaners. This Coalition provides a wealth of information with respect to program administration issues, funding issues, as well as innovative technologies. Lessons learned from other states are incorporated into the functioning of the Wisconsin DERF program.

5. The DNR, DOR and industry should aggressively pursue the statutory changes identified in this report using methods available to them. These changes will continue to move this program forward and help alleviate future funding crises. The absence of these statutory changes will make effective program implementation difficult.